IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 16, 2006 Session

IN RE C.R.D.

Appeal from the Juvenile Court for Montgomery County
No. 91-186 Wayne C. Shelton, Judge

No. M2005-02376-COA-R3-JV - Filed on September 4, 2007

This appeal involves the parenting arrangements for a non-marital child. The biological father, whose military career had prevented him from living near the child, moved to the city where the child resided and requested the Montgomery County Juvenile Court to establish a joint parenting arrangement which gave each parent equal parenting time. The juvenile court declined to consider the father's petition based on its conclusion that the father's decision to move to the city where the child resided was not significant enough to warrant further modifications in the existing parenting arrangement. We have determined that the father has established that a material change in circumstances has occurred and that the trial court must consider whether further modifications in the existing parenting arrangement to enable the child to spend more time with her father would be in the child's best interests.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Vacated and Remanded

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Jeffrey L. Levy, Nashville, Tennessee, for the appellant, James H. Donahue.

Sharon T. Massey, Clarksville, Tennessee, for the appellee, Mary E. Brown.

OPINION

I.

James H. Donahue, a major in the United States Army, was stationed at Ft. Knox, Kentucky in late 1997. He had a short-lived relationship with Mary E. Brown who was a long-time resident of Clarksville, Tennessee. On September 12, 1998, Ms. Brown gave birth to C.R.D. In November 1999, the Montgomery County Juvenile Court entered an order establishing Mr. Donahue's parentage and setting child support. Ms. Brown was designated as the primary residential parent, and Mr. Donahue, who by that time had been transferred to Fairmont, West Virginia, was granted visitation on three-day weekends and holidays as his schedule would permit. He was also granted summer visitation with increased frequency as the child grew older. Mr. Donahue immediately

became an active figure in C.R.D.'s life, and, over the years, C.R.D. has developed a strong, loving relationship with both parents.

By 2002, Mr. Donahue had moved to Westlake, Ohio. He had also separated from the Army and had enlisted in the Army Reserve. He filed a petition to modify his visitation schedule and child support. The juvenile court established a new visitation schedule for the period that C.R.D. was in pre-school and kindergarten. After C.R.D. entered kindergarten, the new schedule provided that Mr. Donahue would have visitation every other weekend, spring break, one-half of C.R.D.'s Christmas vacation, and six weeks during the summer. The juvenile court's September 16, 2002 order, which was modified slightly in June 2003, also provided that the parties would share the burden of transportation by meeting in Florence, Kentucky to exchange custody.

Mr. Donahue's visitation was always complicated by the distance between the parties' residences. While both parties tried to adhere to the juvenile court's order regarding the exchange of custody, they were not always able to meet at the designated times and places. Angry exchanges generally occurred when the parties met.

On February 12, 2004, Mr. Donahue filed a petition seeking the adoption of a new parenting plan that incorporated regular monthly visitation as well as weekend visitation on most holidays. Mr. Donahue also offered to pay for C.R.D.'s airfare except for the summer and Christmas visitations. Under Mr. Donahue's proposal, C.R.D. would spend one-half of her Christmas vacation and all but one week of her summer vacation with Mr. Donahue. The plan also envisioned that the parent with whom C.R.D. was residing would be designated as the residential parent while C.R.D. was actually residing with that parent. Ms. Brown responded to Mr. Donahue's petition with her own proposed plan, which left residential time unchanged but made Mr. Donahue responsible for all transportation.[1]

The juvenile court conducted a hearing on August 11, 2004. By that time, the parties were largely in agreement that visitation should be monthly, although they were unable to agree on the details. Dr. Janie Berryman, a psychologist who had worked with the parents and with C.R.D., testified that C.R.D. was equally happy with both parents and that she was doing well. Dr. Berryman observed that C.R.D. had a warm relationship with her step-mother. Dr. Berryman expressed concern regarding the parents' aggression toward each other and suggested that C.R.D. would benefit if her parents were not required to interact during the transition between residential times. Dr. Berryman testified that the parties' current every-other-week visitation was not working. She also characterized the parties' attempts at long distance, regular monthly visits as unique and suggested that implementation would require organization and cooperation between Mr. Donahue and Ms. Brown.

[1]Also at issue below were (1) a child-support arrearage, (2) Mr. Donahue's request for a reduction in child support based on a reduction in his income due to his separation from the Army and enlistment with the Army Reserve, and (3) Mr. Donahue's request to make up residential time missed during his military obligations. None of these issues are presented on appeal.

Following the hearing, the juvenile court worked with the parties to establish a residential parenting schedule that essentially mirrored Mr. Donahue's requests. Under this plan, Mr. Donahue received residential time with C.R.D. roughly one weekend a month (generally incorporating holiday weekends), one-half of C.R.D.'s Christmas holiday, and six weeks in the summer. Mr. Donahue and Ms. Brown received joint authority with regard to their daughter's religious upbringing and extracurricular activities. Ms. Brown received authority to make health care and education decisions. Mr. Donahue was to provide air transportation for weekend visits, picking C.R.D. up at school on the designated afternoon and returning C.R.D. to school on the morning following the visit. All other pending matters between the parties were resolved at the hearing.

Unfortunately, the parties were unable to agree on the wording of the juvenile court's order. On October 13, 2004, Ms. Brown submitted a proposed "final parenting plan." Two days later, on October 15, 2004, Mr. Donahue submitted a proposed "shared parenting plan," a draft order approving the plan, and a 34-page transcript of the juvenile court's ruling from the bench on August 11, 2004. On December 16, 2004, the juvenile court signed Mr. Donahue's proposed order. Although the order referenced an attached "shared parenting plan," the juvenile court, for some unexplained reason, did not sign the shared parenting plan.

In the meantime, Mr. Donahue's circumstances changed once again. Eager to be nearer to C.R.D., he accepted a new position as a mobilization officer in the Army Reserves in Birmingham, Alabama. The position provided Mr. Donahue with flexible working and travel arrangements so that he was able to establish residency in Clarksville, Tennessee. Mr. Donahue and his wife, who gave up a lucrative career as a lawyer to facilitate the move to Clarksville, even purchased a house in C.R.D.'s school district.

On January 14, 2005, Mr. Donahue filed a Tenn. R. Civ. P. 59.04 motion to alter or amend the juvenile court's December 16, 2004 order. Mr. Donahue alleged that the existing order was predicated on his residence in Ohio and that his recent move to Clarksville represented a changed circumstance that warranted an alteration of the parenting plan. Mr. Donahue requested a shared parenting arrangement that gave joint decision-making authority to him and Ms. Brown and divided C.R.D.'s residential time equally between the two. On February 7, 2005, the court approved a pendente lite visitation agreement, which established every-other-weekend residential time for Mr. Donahue.

Inexplicably, on March 23, 2005, the juvenile court signed the proposed final parenting plan that had been submitted by Ms. Brown in October 2004. As far as this record shows, neither party sought the entry of this order, and neither party called the juvenile court's attention to the fact that it differed from the order entered on December 16, 2004 adopting the shared parenting plan or the pendente lite order than had been entered on February 7, 2005. As best we can determine, both parties ignored the March 23, 2005 order and continued to comply with the February 7, 2005 pendente lite order.

The juvenile court eventually heard Mr. Donahue's Tenn. R. Civ. P. 59.04 motion on August 22, 2005. It treated the motion as if it was a petition to change custody. Dr. Berryman again testified, stating that she had met with C.R.D. once in April 2005 and that C.R.D. did not require

additional regularly scheduled meetings. She also testified that Mr. Donahue and Ms. Brown had stopped meeting personally to exchange C.R.D. and that this change had been beneficial. Finally, Dr. Berryman testified that allowing Mr. Donahue to spend more time with C.R.D. now that he lived in Clarksville would be beneficial, as long as Mr. Donahue and Ms. Brown could handle the situation amicably.

Dr. Berryman did not make a recommendation regarding a particular residential schedule for C.R.D. When questioned about the effect that an equal division of parenting time would have on C.R.D., Dr. Berryman replied that the research was inconclusive and suggested that C.R.D. would fare well as long as her parents got along well. She also pointed out that equal parenting time would have a negative effect on C.R.D. if her parents continued to make custody a contentious issue.

Mr. Donahue testified that his temporary military position in Birmingham would end in January 2006 and that he had already secured full-time employment in Nashville that would begin after his Reserve commitment in Alabama was completed. He described how he and his wife had become actively involved in C.R.D.'s school and athletic activities since they moved to Clarksville. Mr. Donahue also explained how he and Ms. Brown continued to have difficulties implementing the telephone visitation and holiday weekend visitation called for by the existing custody arrangement.

Ms. Brown testified that having Mr. Donahue pick C.R.D. up from school and return her there was working well as a mechanism of exchanging custody. She stated that she was opposed to Mr. Donahue receiving extra visitation time because "he gets ample time with [C.R.D.]." Ms. Brown also testified that, while C.R.D. was not presently involved in extracurricular activities, in the past such activities had been difficult for C.R.D. to engage in because Ms. Brown worked during the week and C.R.D. visited Mr. Donahue on the weekends.

In its August 24, 2005 order, the juvenile court determined that Mr. Donahue had demonstrated a change in circumstances but that the change did not materially affect C.R.D. and was not "significant enough" to warrant a change in the parenting plan. Accordingly, the juvenile court denied Mr. Donahue's Tenn. R. Civ. P. 59.04 motion because it was "not willing to divide this child up between the two parents as requested by Mr. Donahue." The court also ordered that the parties' pendente lite agreement would become the new final parenting plan. Mr. Donahue has appealed.

II.

Before addressing the substantive issues raised on this appeal, we must express concern about the state of the record on appeal and the apparent inconsistency of the juvenile court's orders. The incompleteness of the record[2] and the manner in which it has been prepared[3] has caused confusion to the parties and has caused unnecessary complexity on appeal. The parties and the juvenile court clerk share the responsibility to ensure that a record that complies with Tenn. R. App. P. 24 and 25

[2] The record on appeal does not include any orders or other papers filed with the juvenile court prior to October 2003.

[3] The record does not meet the requirements of Tenn. R. Civ. P. 25(a).

is timely filed with this court. They have not shouldered their responsibility in this case. However, despite its shortcomings, the record contains sufficient facts to enable this court to address the issues raised on appeal.

Of more concern is the juvenile court's apparent nonchalance about the signature and entry of its orders. Even though informality is an appropriate earmark of proceedings in juvenile court,[4] care should be taken to ensure that the orders entered in juvenile court accurately reflect the court's ruling and decisions with regard to the matters actually presented. Failure to use appropriate care with regard to the substance of orders and manner in which they are entered creates confusion regarding the juvenile court's actual ruling. This confusion requires the parties either to guess about the meaning of the order or to expend their time and resources to seek clarification.

The orders entered by the juvenile court following the August 22, 2004 hearing provide examples of the problems that inattention can cause. The lawyers for Mr. Donahue and Ms. Brown could not agree upon the wording of an order embodying the juvenile court's ruling from the bench on August 22, 2004. Accordingly, on October 13, 2004, Ms. Brown's lawyer sent the juvenile court a draft final parenting plan reflecting her understanding of the court's ruling. Two days later, on October 15, 2004, Mr. Donahoe's lawyer set the juvenile court a draft order and a draft shared parenting plan.

Thus, by October 15, 2004, the juvenile court had received two conflicting orders in the case. On December 16, 2004, the juvenile court signed the order prepared by Mr. Donahue but did not sign the accompanying shared parenting plan even though it was referenced in the order that the court had signed. Both parties apparently believed that the December 16, 2004 order was the final order. On January 14, 2005 – within the thirty-day period prescribed in Tenn. R. Civ. P. 59.02 – Mr. Donahue filed a motion to alter or amend the December 16, 2004 order.

On March 23, 2005, while the parties awaited the hearing on Mr. Donahue's Tenn. R. Civ. P. 59.04 motion, the juvenile court, apparently sua sponte, signed and filed the draft order that Ms. Brown had submitted on October 13, 2004. The record contains no indication that either party requested the court to act on Ms. Brown's draft order, and likewise, the juvenile judge offered no explanation for signing Ms. Brown's draft order on March 23, 2005 when it had already signed Mr. Donahue's draft order on December 16, 2004. Thus, we are left to speculate whether the signing and entry of the March 23, 2005 order was merely an inadvertence or whether it reflected the juvenile judge's substantive change of mind. Whatever the answer may be, the record reflects that the parties themselves have largely ignored the March 23, 2005 order and have been complying with the February 7, 2005 pendente lite order.

This phase of the litigation began on February 12, 2004, when Mr. Donahue filed his petition to modify the residential arrangement established by the September 16, 2002 order and to adopt a new parenting plan. The juvenile court conducted a hearing on this petition on August 22, 2004 and

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[4] Tenn. Code Ann. § 37-1-101(a)(4) (2005) (stating that juvenile courts should provide a "simple judicial procedure"); *V.D. v. N.M.B.*, No. M2003-00186-COA-R3-CV, 2004 WL 1732323, at *4 (Tenn. Ct. App. July 26, 2004) (No Tenn. R. App. P. 11 application filed).

then entered conflicting orders on December 16, 2004 and later on March 23, 2005. Mr. Donahue filed a timely Tenn. R. Civ. P. 59.04 motion to alter or amend the December 16, 2004 order. The juvenile court apparently decided to revisit Mr. Donahue's petition to modify the September 16, 2002 order because it permitted the parties to present additional evidence regarding the changed circumstances and their child's best interests. Accordingly, we have concluded that the juvenile court's September 16, 2002 order, as modified in June 2003, established the residential arrangement that Mr. Donahue sought to change.

III.

Prescribing a child's residential arrangements are among the most important decisions that courts make. *In re Zaylen R.,* No. M2003-00367-COA-R3-JV, 2005 WL 2384703, at *3 (Tenn. Ct. App. Sept. 27, 2005) (No Tenn. R. App. P. 11 application filed); *Steen v. Steen*, 61 S.W.3d 324, 327 (Tenn. Ct. App. 2001); *Adelsperger v. Adelsperger*, 970 S.W.2d 482, 484 (Tenn. Ct. App. 1997). The chief purpose of a parenting plan is to promote the child's welfare by creating an environment that promotes a nurturing relationship with both parents. *Aaby v. Strange*, 924 S.W.2d 623, 629 (Tenn. 1996); *Shofner v. Shofner*, 181 S.W.3d 703, 716 (Tenn. Ct. App. 2004). The needs of the child are paramount, and the desires of the parents are secondary. *Boyer v. Heimermann*, No. M2006-01566-COA-R3-CV, 2007 WL 969408, at *4 (Tenn. Ct. App. Mar. 30, 2007) *perm. app. filed* (Tenn. May 29, 2007); *Gaskill v. Gaskill*, 936 S.W.2d 626, 630 (Tenn. Ct. App. 1996).

Each parent has his or her own strengths and weaknesses, *Gaskill v. Gaskill*, 936 S.W.2d at 630, and it would be unrealistic to measure parents against a standard of perfection. *Earls v. Earls*, 42 S.W.3d 877, 885 (Tenn. Ct. App. 2000); *Bush v. Bush*, 684 S.W.2d 89, 93 (Tenn. Ct. App. 1984). Decisions regarding parenting arrangements are not intended to reward parents for prior virtuous conduct or to punish them for their human frailties or past missteps. *Earls v. Earls*, 42 S.W.3d at 885; *Gaskill v. Gaskill*, 936 S.W.2d at 630. Rather, taking the parents as they presently are, the courts must pragmatically decide whether the parents will be able to share the responsibilities for raising their child jointly and, if not, which parent is comparatively more fit to take on the primary parenting role. *Oliver v. Oliver*, No. M2002-02880-COA-R3-CV, 2004 WL 892536, at *2 (Tenn. Ct. App. Apr. 26, 2004) (No Tenn. R. App. P. 11 application filed); *McEvoy v. Brewer*, No. M2001-02054-COA-R3-CV, 2003 WL 22794521, at *2 (Tenn. Ct. App. Nov. 25, 2003) (No Tenn. R. App. P. 11 application filed).

Growing children benefit from stability and continuity in their personal relationships. *Adelsperger v. Adelsperger*, 970 S.W.2d at 485. However, Tennessee's courts are statutorily authorized to alter parenting arrangements in response to changes in circumstances. Tenn. Code Ann. § 36-6-101(a)(1) (Supp. 2006). However, given the importance of stability in a child's life, a court should not alter an existing parenting arrangement until: (1) it is satisfied either that the child's circumstances have changed in a material way since the entry of the presently operative custody decree or that a parent's circumstances have changed in a way that affects or could affect the child's well-being; (2) it has carefully compared the current fitness of the parents to be the child's custodian; and (3) it has concluded that changing the existing parenting arrangement is in the child's best interests. Tenn. Code Ann. § 36-6-101(a)(2)(B), (C); *Kendrick v. Shoemake*, 90 S.W.3d 566, 570 (Tenn. 2002); *Blair v. Badenhope*, 77 S.W.3d 137, 150 (Tenn. 2002).

Determining whether an existing residential arrangement should be altered is a two-step process. The threshold question is whether a material change in circumstances has occurred since the entry of the prior order. Tenn. Code Ann. § 36-6-101(a)(1)(B), (C); *Krupp v. Cunningham-Grogan*, No. M2005-01098-COA-R3-CV, 2006 WL 2505037, at *7 (Tenn. Ct. App. Aug. 29, 2006) (No Tenn. R. App. P. 11 application filed). Only if the court answers this threshold question in the affirmative does it proceed to the second question – whether it is in the child's best interests to modify the current residential arrangement. *Kendrick v. Shoemake,* 90 S.W.3d at 575; *Boyer v. Heimermann*, 2007 WL 969408, at *7-8; *McEvoy v. Brewer,* 2003 WL 22794521, at *4.

IV.

Mr. Donahue asserts that the juvenile court erred by deciding that a material change in circumstances had not occurred since the entry of the last order establishing a residential arrangement for the parties' child. Ms. Brown responds that the juvenile court correctly found that the changes that had occurred, if any, were not significant enough to warrant considering whether changes in the child's residential arrangements would be in the child's best interests. We agree with Mr. Donahue's argument that the juvenile court erred by concluding that the changes in circumstances of both C.R.D. and her parents were not significant enough to warrant considering whether further modifications in the parenting arrangement would be C.R.D.'s best interests in light of her father's relocation to Clarksville.

Tenn. Code Ann. § 36-6-101(a)(2)(C) (Supp. 2006)[5] sets a very low threshold for establishing the existence of a material change of circumstance. *Boyer v. Heimermann*, 2007 WL 969408, at *5-6; *Rose v. Lashlee*, No. M2005-00361-COA-R3-CV, 2006 WL 2390980, at *2 n.3 (Tenn. Ct. App. Aug. 18, 2006) (No Tenn. R. App. P. 11 application filed). The statute provides, in part, that

> [a] material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance for purposes of modification of a residential parenting schedule may include, but is not limited to, significant changes in the needs of the child over time, which may include changes relating to age; significant changes in the parent's living or working condition that significantly affect parenting; failure to adhere to the parenting plan; or other circumstances making a change in residential parenting time in the best interest of the child.

While there are no bright-line rules for determining whether a material change in circumstances has occurred, the Tennessee Supreme Court has pointed out several of the factors that courts should consider including: (1) whether the change occurred before or after the entry of the order sought to be modified, (2) whether the change was not known or reasonably anticipated when the order was

[5] Parenting arrangements for the parents of a non-marital child must be established and modified using the same standards used in divorce cases. Tenn. Code Ann. § 36-2-311(a)(9) (2005).

entered,[6] and (3) whether the change affects the child's well-being in a meaningful way. *Cranston v. Combs*, 106 S.W.3d 641, 644 (Tenn. 2003); *Kendrick v. Shoemake*, 90 S.W.3d at 570; *Blair v. Badenhope*, 77 S.W.3d at 150.

Not every change in the circumstances of either a child or a parent will qualify as a material change in circumstances. The change must be "significant" before it will be considered material. However, evidence showing that an existing arrangement has proven unworkable for the parties may be sufficient to satisfy the material change in circumstances test. *Boyer v. Heimermann*, 2007 WL 969408, at *6; *Rose v. Lashlee,* 2006 WL 2390980, at *2 n.3; *Rushing v. Rushing*, No. W2003-01413-COA-R3-CV, 2004 WL 249409, at *6 (Tenn. Ct. App. Oct. 27, 2004) (No Tenn. R. App. P. 11 application filed); *Vaccarella v. Vaccarella*, 49 S.W.3d 307, 315-16 (Tenn. Ct. App. 2001).

Positive changes in a parent's ability or willingness to care for his or her child are certainly circumstances that have or could have a significant effect on a child's well-being. Tennessee has a strong public policy encouraging parents to play an active role in their children's upbringing. *Aaby v. Strange*, 924 S.W.2d at 629; *Webster v. Webster*, No. W2005-01288-COA-R3-CV, 2006 WL 3008019, at *12-14 (Tenn. Ct. App. Oct. 24, 2006) (No Tenn. R. App. P. 11 application filed). Thus, significant positive changes in a non-custodial parent's ability to play an active role in a child's upbringing may be considered to be material changes in circumstances. *See Rushing v. Rushing*, 2004 WL 2439309, at *6; *Scales v. Mackie*, No. M2001-03161-COA-R3-CV, 2003 WL 43355, at *5 (Tenn. Ct. App. Jan. 7, 2003) (No Tenn. R. App. P. 11 application filed); *Roache v. Bourisaw*, No. M2000-02651-COA-R3-CV, 2001 WL 1191379, at *7 -8 (Tenn. Ct. App. Oct. 10, 2001) (No Tenn. R. App. P. 11 application filed); *see also Perdue v. Perdue*, 257 N.E.2d 827, 827-28 (Ind. 1970); *Kinney v. Hickey*, 486 A.2d 1079, 1081-82 nn.2 & 5 (R.I. 1985); *Hogge v. Hogge*, 649 P.2d 51, 54-55 (Utah 1982).

Mr. Donahue has made significant efforts to be a constructive part of C.R.D.'s life ever since the juvenile court established his parentage. Even though his military service forced him to live hundreds of miles away from C.R.D.'s home, Mr. Donahue has found ways to overcome these distances, and he has established a loving, constructive relationship with C.R.D. In late 2004 or early 2005, Mr. Donahue and his wife, at significant personal and professional sacrifice, moved to Clarksville for the purpose of enabling them to spend even more time with C.R.D. This move created a new circumstance that could benefit C.R.D. because it would permit her to spend more time with her father and step-mother.

Ms. Brown has not argued that permitting C.R.D. to spend more time with her father would not be in the child's best interests, and she has presented no evidence contradicting Dr. Berryman's testimony that C.R.D. would benefit from spending more time with Mr. Donahue. She opposes Mr. Donahue's request for more parenting time simply because she believes that C.R.D. is already spending enough time with her father. Such a response, without more, does not provide a basis for refusing to revisit a parenting arrangement when a material change in circumstances has occurred.

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[6] The fact that a circumstance might have been foreseeable when the decree sought to be modified was entered does not, by itself, prevent a finding of change in circumstances. Tenn. Code Ann. § 36-6-101(a)(2)(C); *Boyer v. Heimermann*, 2007 WL 969408, at *5.

If anything, such a dismissive response to a material change in circumstances could reflect a parent's lack of willingness to facilitate and encourage a close continuing parent-child relationship between the child and the parent seeking additional parenting time. *See* Tenn. Code Ann. §§ 36-6-106(a)(10), -404(b)(3) (2005).

Mr. Donahue has proved that a material change in circumstances occurred after the August 22, 2004 hearing. Thus, we have concluded that the juvenile court erred by concluding that the changes in circumstances were not significant enough to warrant further consideration of the parties' current parenting arrangements. Because parenting arrangements are peculiarly within the juvenile court's discretion, *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001); *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988); *Helson v. Cyrus*, 989 S.W.2d 704, 707 (Tenn. Ct. App. 1998), it would be inappropriate for this court to undertake to prescribe what the prospective parenting arrangements should be. This decision is better left to the juvenile court on remand.

We note, however, based on our reading of the transcripts, that the juvenile court's decision to deny Mr. Donahue's Tenn. R. Civ. P. 59.04 application was due in large measure to the court's skepticism about joint parenting. While the juvenile court may not be alone in its view, the Tennessee General Assembly has clearly stated that joint parenting is a permissible alternative in cases of this sort. Tenn. Code Ann. § 36-6-101(a)(1), (a)(2)(A)(i). We are confident that the juvenile court will properly consider whether Mr. Donahue has proved that joint residential parenting is in C.R.D.'s best interests. Of course, the juvenile court, in its discretion, may establish any parenting arrangement that is in the child's best interests, even if the arrangement does not exactly coincide with the parents' requests or desires.

V.

We vacate the order dismissing Mr. Donahue's Tenn. R. Civ. P. 59.04 motion and remand the case to the juvenile court for further proceedings consistent with this opinion. We tax the costs of this appeal in equal proportions to James H. Donahue and his surety and to Mary E. Brown for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.